IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
S.B. Civil Writ Petition No.1725/07
Smt. Vandana Agnihotri Vs. Addl. Civil Judge & Anr.

23.5.2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri O.P. Mishra for petitioner.
Shri Mohammad J. Abban for respondent.

Heard learned counsel for the parties.

This writ petition has been filed by the petitioner against the order dated 10.1.07 whereby his application seeking amendment in a suit for permanent injunction was declined by the Court.

The learned counsel for the petitioner has argued that the application was denied merely on the ground that the patta and the site plan

issued by the Housing Board to the petitioner on which he applied for amendment was not produced before the trial court. It was argued that the patta and the site plan was required to be produced when evidence of the plaintiff would be recorded in as much as the amendment was intended to bring on record the correct description of the property so that the Court could pass effective judgment on the controversy between the parties. It was argued that the application was made at the very early stage when even the issues have not been framed. He relied on the judgment of Hon'ble Supreme Court in Sajjan Kumar Vs. Ram Kishan, (2005) 13 SCC 89.

Learned counsel for the respondent argued that the application

was not bona fide and was not filed belatedly and was filed when the defendants had submitted his written statement and the Court has rightly refused to allow the amendments.

Having heard the learned counsel for the parties and perused the material on record, I find that the petitioner is seeking to correct the description of the property as given in paras 3 to 7 as also in the prayer clause of the plaint. The stage at which the application was filed was when the issues were to be framed. Merely the application was filed when the written statement of the defendant respondents have been filed would not make the application misconceived particularly when it is asserted by the petitioner that application seeking

amendment was filed on the very same day on which the written statement was filed. The Hon'ble Supreme Court in Sajjan Kumar, supra, dealt with the case of similar nature where amendment in the plaint was prayed for in the final stage of the suit and thereto the prayer was for correcting the incorrect description of the suit property in the plaint. Their Lordships proposed amendment necessarily to bring real question in controversy between the parties and refusal to permit amendment likely to create needless complications at the stage of execution in the event of success of the plaintiff in the suit. The ratio of that judgment applies to the facts of the present case in all its four corners. The order of the trial court in not permitting the

amendment was therefore not a correct exercise of the discretion vested in the Court.

Accordingly the impugned order dated 10.1.2007 is set aside, the application for seeking amendment is allowed and the amendments prayed for are ordered to be incorporated in the plaint.

The writ petition is accordingly allowed.

(Mohammad Rafiq),J.

Rs/-